the right of trial by jury guaranteed by the state constitution. *Snell* v. *Niagara Paper Mills*, 86 N. E. 460 (N. Y.).

The amendment to the Constitution of the United States, concerning the right of trial by jury, does not apply to civil actions in state courts. *Walker* v. *Sauvinet*, 92 U. S. 90. This ancient right is protected in the state constitutions by a declaration that the right shall remain inviolate, or by an equivalent provision. See SEDGWICK, STAT. AND CONST. LAW, 2 ed., 482. Therefore it is necessary to determine whether a jury trial was a matter of right prior to the adoption of the state constitution. Some colonial courts, because of the difficulty in giving such a question to a jury, sent to a referee any action in law involving a long account. So, although a compulsory reference defeats a jury trial, it is not unconstitutional in the states that had formerly allowed this practice. *Creve Cœur Lake Ice Co.* v. *Tam*, 138 Mo. 385; *Monitor Iron Works* v. *Ketchum*, 47 Wis. 177. But it was never allowed in some states. *Francis* v. *Baker*, 11 R. I. 103. And a compulsory reference is unconstitutional in the federal courts. *United States* v. *Rathbone*, 2 Paine (U. S.) 578. A long account is ordinarily referable in New York, but when it appears in a counterclaim, a compulsory reference is held unconstitutional, because early practice would not have allowed such a reference. *Steck* v. *Colorado F. & I. Co.*, 142 N. Y. 236. This is properly followed in the main case. But see *Monitor Iron Works* v. *Ketchum*, *supra*.

CONTEMPT — POWER TO PUNISH FOR CONTEMPT — WHEN SWORN DENIAL BY DEFENDANT IS CONCLUSIVE. — In a proceeding for contempt, under a charge of attempting to influence talesmen summoned on the jury, the defendant in a sworn statement denied some of the acts charged and denied any intention to influence the talesmen by the admitted acts. The court admitted further evidence to refute this statement, and the defendant was convicted. *Held*, that it is not error to admit this evidence. *Coleman* v. *State*, 113 S. W. 1045 (Tenn.).

In an action for contempt the old common law rule was that the defendant might purge the contempt by a sworn statement of denial. *Underwood's Case*, 2 Humph. 46. In some states statutes have reversed the common law rule. *Drady* v. *District Court*, 126 Ia. 345. And it seems never to have been adopted in equity. *United States* v. *Debs*, 64 Fed. 724. When the contempt charged consists of certain unambiguous facts, the common law rule is not generally accepted and evidence may be admitted contradicting the defendant's denial. *United States* v. *Shipp*, 203 U. S. 563. Thus the defendant's denial is not conclusive when the act of contempt has been the publication of matter libellous *per se*. *In re Chadwick*, 109 Mich. 588. *Contra*, *In re Robinson*, 117 N. C. 533. But when the matter published is of an ambiguous nature and clearly open to explanation, the defendant's denial of intent to act in contempt will be conclusive. *Fishback* v. *State*, 131 Ind. 304. Since, however, the acts charged in the principal case were unambiguously in contempt, the defendant's denial should not bar the admission of further evidence in rebuttal.

CORPORATIONS — CORPORATE POWERS AND THEIR EXERCISE — EXTERIOR ADVERTISING ON PUBLIC OMNIBUS. — The plaintiff corporation maintained large, highly colored advertising signs upon the outside of its omnibuses. When threatened with interference by the city, the plaintiff sought to enjoin municipal action. *Held*, that an injunction will not be granted, as the plaintiff in engaging in exterior advertising is acting *ultra vires*. *The Fifth Avenue Coach Co.* v. *City of New York*, 40 N. Y. L. J. 1587 (N. Y., Ct. App., Jan. 5, 1909).

This decision affirms the decision of the lower court, commented upon in 21 HARV. L. REV. 445.

CORPORATIONS — CORPORATIONS DE FACTO — RECEIVER FOR DE FACTO CORPORATION. — A receiver was appointed for an insolvent railroad corporation, and he sold some of its property. There was a defect in the incorporation of the railroad on account of a failure to file an affidavit required by the statute.

Later this defect was cured *ab initio* under statutory provision. *Held*, that the acts of the receiver are valid. *Matter of New York, W. & B. Ry. Co.*, 193 N. Y. 73. See NOTES, p. 369.

CORPORATIONS — STOCKHOLDERS: INDIVIDUAL LIABILITY TO CORPORATION AND CREDITORS — RIGHT OF SET-OFF. — The plaintiff obtained a judgment against the defendant corporation and the execution was returned *nulla bona*. A bill in equity was then brought to enforce a stockholder's liability for unpaid stock in satisfaction of the judgment. *Held*, that the stockholder may set off against such liability a *bona fide* indebtedness of the corporation to himself. *Austin Powder Co.* v. *Commercial Lead Co.*, 114 S. W. 67 (Mo., St. L. Ct. App.).

It is well settled that the liability of the stockholders on unpaid stock is an asset of an insolvent corporation available to the creditors through a bill in equity after the remedies at law have been exhausted without satisfaction. *Hickling* v. *Wilson*, 104 Ill. 54. And when proceedings are taken to wind up a corporation or to take an account of its assets for a rateable distribution among all the creditors, a stockholder cannot set off against his statutory liabilities or his liability on unpaid stock any debt of the corporation to himself. *Shickle* v. *Watts*, 94 Mo. 410, 418; *Matter of Empire City Bank*, 18 N. Y. 199, 227. To allow him to do so would be to give him a preference as creditor by reason merely of his position as stockholder. But where an individual judgment creditor is seeking equitable execution against the liability for unpaid stock as a corporation asset, it seems just to allow the stockholder to set-off such indebtedness; for the petitioning creditor is no more entitled to a preference than is the stockholder. *Christensen* v. *Colby*, 43 Hun (N. Y.) 362.

CRIMINAL LAW — TRIAL — PRESENCE OF ACCUSED IN CAPITAL CASE AT RENDITION OF VERDICT. — The accused, who was indicted for murder, was on bond. When the case was given to the jury he left the court room, and before his return the jury rendered a verdict of guilty of manslaughter. *Held*, that the receiving of the verdict in the absence of the prisoner is reversible error. *Sherrod* v. *State*, 47 So. 554 (Miss ).

In non-capital felonies it has been frequently held that the prisoner may waive his right to be present at the rendition of the verdict. *State* v. *Kelly*, 97 N. C. 404. *Contra*, *Prine* v. *Commonwealth*, 18 Pa. St. 103. The distinction taken by the court in the principal case between capital and other cases seems artificial. It is argued that the accused and the public are more interested in his life than in his liberty. But in neither case has the right to be present at the verdict any practical value; for a conclusion is reached before the jury returns. The arguments against waiver are essentially historical. One is that the court can have no jurisdiction over the accused if he is at large. *Andrews* v. *State*, 2 Sneed (Tenn.) 550. Another is that the jury ought to see the prisoner. *Rex* v. *Ladsingham*, T. Raym. 193. These considerations apply today with equally much or little force to capital and to non-capital crimes. One rule should, accordingly, cover both cases, and that rule is conceived to be the better which limits the opportunities for merely technical reversal. See 11 HARV. L. REV. 409; 15 *ibid.* 412.

DAMAGES — MEASURE OF DAMAGES — EXTENSION OF ENGLISH RULE IN CONTRACTS FOR SALE OF REALTY. — The plaintiff and the defendant made a contract whereby the defendant was to have free access to certain tips, to take and carry away therefrom, at a specified rate per ton, such quantity of slag as he might desire. The plaintiff was unable to perform, for want of title to the slag. In an action brought by him, the defendant counterclaimed for this breach. The trial court found that the slag had become part of the ground itself. *Held*, that the defendant can recover only nominal damages on his counterclaim. *Morgan* v. *Russell & Sons*, 25 T. L. R. 120 (Eng., K. B., Nov. 26, 1908).

In suits for breach of contract to sell land, the majority of courts in this